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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,452	04/12/2001	Randall Allen Vogel	AD6728 US NA	3330

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BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

JACKSON, MONIQUE R

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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12/03/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-Legal.PRC@usa.dupont.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/833,452	Applicant(s) VOGEL ET AL.	
	Examiner Monique R. Jackson	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of Item No. 11. NOTE: The Applicant's arguments filed 11/13/07 have been considered but are not persuasive. With regards to Smith, the Applicant argues specific embodiments of Smith as opposed to the teachings of the document as a whole. Though Smith includes examples 11f-11i formed by post-extrusion lamination, Smith specifically teaches coextrusion and hence the teachings of Smith with respect to the layer structures exemplified in 11f-11i would also encompass the same structures produced by coextrusion given the very limiting number of production methods taught by Smith. As discussed in the prior office action, Smith specifically teaches multilayer structures that read upon the claimed invention.

Applicant's arguments in the paragraph bridging pages 4 and 5 are unclear given that the Applicant first argues no pigment but then states that the additive can be a pigment while the Smith layer 79 contains a pigment but no other additive. Aside from the lack of clarity of the initial argument, the Examiner again notes that the Applicant appears to be arguing specific examples of Smith and not the teachings as a whole. The Applicant next argues that Smith's disclosure of "at least about 60 units, where 100 is the maximum DOI reading" does not read upon the claimed at least 80, however, the Examiner respectfully disagrees and maintains her position that one skilled in the art at the time of the invention would clearly envisage a DOI range of 60 to 100 based on the disclosure of Smith. Lastly, the Applicant argues that even assuming, *arguendo*, that Smith did disclose a DOI of at least 80, Smith does not disclose the combination of a DOI of at least 80 and a gloss that exceeds 60% at a 20 degree angle. However, the Examiner again notes that Smith clearly teaches that the trim products have a gloss of at least about 60-65 at an angle of 20 degrees and hence, given the Examiner's position that the DOI limitation is met, the claimed limitation combining the two is also met.

With respect to JP'828, the Applicant argues that the second outer layer of JP'828 is a sealing layer which comes in contact with a product and not a surface layer however the Examiner notes that the Applicant is arguing the intended use of the film structure and given that the second outer layer taught by JP'828 is on a surface of the film, it reads upon the claimed surface layer limitation. The Applicant again argues that the instant claims are directed to a thermoformable film or sheet, another intended use limitation, and that JP'828 does not suggest a thermoformable film or sheet. However, the Examiner notes that a limitation that is merely a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Examiner maintains her position that the film taught by JP'828 is *capable* of being thermoformed, particularly the intermediate structure, i.e. before stretching, which has a total film thickness of about 400 to about 820 microns which reads upon the claimed thickness ranges, and comprises the same layer materials as the instant invention. The Applicant further argues that JP'828 does not suggest adding a pigment because the packaging film taught by JP'828 is meant to be clear however the Examiner notes that packaging materials can be both clear and colored and that many packaging materials in the art are both. In the second half of Page 7 of the remarks filed 11/13/07, the Applicant identifies additional features of dependent claims that allegedly distinguish the invention over the teachings of JP'828, however some of the recited dependent claims have not been rejected over JP'828 (Claims 69-72) or are canceled (Claim 82) and for those that have been rejected over JP'828, the Applicant provides no arguments to rebut the Examiner's position with respect to the pigment, the substrate, or the flow

properties. Hence, the Examiner maintains her position that the instant invention would have been obvious over JP'828.

With respect to Flieger, the Applicant argues that Flieger: 1) does not teach a thermoformable film, 2) does not suggest a thickness larger than 125 microns, 3) allegedly teaches away from a heavier gauge, 4) does not require a decorative surface, and 5) cannot be a reference since a Rule 131 declaration has been provided to swear behind the effective date. The Examiner does not find these arguments persuasive given that they are the same arguments presented previously and already addressed by the Examiner in the prior office action. The Examiner again notes that the packaging film taught by Flieger et al is capable of being thermoformed (item 1) and that Flieger et al specifically teach that the packaging film can be used to make a bag **or other container**, and hence does not limit the invention to a 25kg bag only and in fact suggests that the packaging can vary in thickness based on the intended end use as discussed previously (item 2). With respect to item 3, the Examiner notes that the teachings of Flieger et al with respect to non-negligible effects on the compounding of the bag do not teach away from the claimed thickness as argued by the Applicant. As stated previously, the bag is only one embodiment of Flieger et al and the Examiner maintains her position that the thickness is an obvious result-effective variable and one skilled in the art would have been motivated to utilize routine experimentation to determine the optimum thickness based on the desired mechanical properties and end use. In terms of item 4, Applicant's arguments do not provide any rebuttal to the Examiner's position that the incorporation of coloring agents or additives into any of the layers taught by Flieger et al would have been obvious given the teachings of Flieger et al and the state of the art. With respect to the Pike declaration recited in item 5, the Examiner notes

that the Flieger reference is a 102(b) reference and cannot be sworn behind. The Applicant also argues that the inner layer of Flieger is pigmented and not clear, however, Flieger teaches that the outer layer is clear and the disclosed structure would still read upon the claimed invention of Claim 6. In terms of the substrate of Claims 42 and 83, as stated previously, a third polymer layer would read upon the claimed substrate. In terms of the thickness of Claims 57-60 and the DOI of Claims 69-72, it is noted that these claims were not part of the rejection, and that Claim 82 is canceled. Lastly, as stated previously, the Examiner notes that the flow properties would be as claimed given that the materials are the same and are coextruded.

The Examiner therefore maintains her position that the cited prior art references read upon the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 10:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Monique R. Jackson
Primary Examiner
Technology Center 1700
November 27, 2007